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April 11, 2003

VIA HAND DELIVERY

Ms. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful In Furnishing Water Service to Its Customers, Docket No. 03-00118.

Dear Chairman Kyle:

Pursuant to the March 17, 2003 Order on March 12, 2003 Status Conference, enclosed please find the original and 13 copies of Tennessee American Water Company's Motion to Compel Responses to Discovery Propounded on Chattanooga Manufacturers Association for filing in the above-referenced docket. Also enclosed is an additional copy of the Motion to Compel, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions with respect to this filing, please do not hesitate to contact me at the telephone number listed above.

Very truly yours,



R. Dale Grimes

RDG/gci

Enclosures

cc: Certificate of Service List (w/ enclosure)
Mr. William F. L'Ecuyer (w/ enclosure)
Mr. Michael Miller (w/ enclosure)
Mr. Roy Ferrell (w/ enclosure)
T.G. Pappas, Esq. (w/ enclosure)
George Masterson, Esq. (w/ enclosure)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

Docket No. 03-00118

**TENNESSEE AMERICAN WATER COMPANY'S
MOTION TO COMPEL RESPONSES TO DISCOVERY PROPOUNDED
ON CHATTANOOGA MANUFACTURERS ASSOCIATION**

Tennessee American Water Company ("TAWC") respectfully moves to compel the Chattanooga Manufacturers Association ("CMA") to answer each and every discovery request promulgated by TAWC on March 26, 2003. Those discovery requests and objections are set forth in Exhibit A.

TAWC's discovery requests are designed to discover what objections or oppositions the intervenors have to the requested rate increase; the basis for such objections or oppositions; the documents that relate to and the persons having knowledge of the basis for such objections or oppositions; and the intervenors' anticipated expert testimony. Apparently the intervenors have some objection or opposition or else they would not have sought leave to intervene. Nonetheless, the intervenors have not yet disclosed why they have intervened.

The schedule established for this case does not require the intervenors to file pre-filed testimony until May 30, 2003, one month prior to the hearing. Meanwhile, TAWC is given three weeks after receiving the intervenors' pre-filed testimony to prepare and file its rebuttal

testimony. In all fairness to the Petitioner, and for the orderly development and presentation of the issues in this matter, it is appropriate and necessary for the intervenors to respond to TAWC's discovery requests so that TAWC can have as much notice as reasonably possible of the intervenors' positions.

TAWC does not seek to override the schedule for the filing of testimony, but merely to get some earlier notice of what issues it will be required to defend and litigate in this matter. Perhaps the intervenors are not currently able to provide all the details of their positions; this should not prevent them from giving fair notice of those positions by disclosing what they unquestionably must know already about their positions. Again, if the intervenors do not know now what their objections or oppositions to the rate increase are, why did they intervene?

As stated in the CAPD's objections, the purpose of the discovery rules "is to allow for discovery of facts which 'will enable litigants to prepare for trial free from the element of surprise.'" *See*, Objection by the CAPD, filed April 7, 2003, at 2. Further, the CAPD states that "[t]he purpose of discovery is 'to narrow and clarify the basic issues between the parties.'" *Id.* at 3. It is to achieve these very goals that TAWC has propounded limited and appropriate discovery to the intervenors in this case.

The CMA has raised a number of vague, general, and boilerplate objections to TAWC's discovery requests. Nevertheless, TAWC's discovery requests are basic and unburdensome. Three requests merely seek to determine the "basis for any objection or opposition CMA has with respect to any aspect of the rate increase requested by TAWC." *See*, Exhibit A, TAWC's Discovery Requests 1, 10 (requesting documents that refer or relate to this topic), and 11 (requesting the names of persons with knowledge of this topic). This is the most basic information the discovery rules allow. Yet CMA asserts these requests are overbroad, vague,

and ambiguous. Clearly, that is not the case. Moreover, CMA objects to Request 1 as premature because pre-filed testimony is not due until May 30, 2003. However, as set forth in previous paragraphs of this motion, it is not premature for the CMA to give to TAWC fair notice of the basis of its intervention and what objections or oppositions it has to the rate increase. That is all Request 1 seeks; it does not ask the CMA to file its "testimony" any earlier than the schedule requires. Accordingly, the CMA's objections to Requests 1, 10, and 11 are without merit and should be overruled.

A number of TAWC's discovery requests seek information concerning any expert testimony the CMA intends to use in this case. *See*, Exhibit A, TAWC's Discovery Requests 2, 4-8. These discovery requests seek basic information about any expert witness the CMA intends to call to testify at the hearing and to obtain somewhat more detailed information concerning "facts known and opinions held" by the expert as permitted by the Tennessee Rules of Civil Procedure. These discovery requests are the most efficient and expeditious way to obtain such information, although the alternative means of a discovery deposition is also authorized by the Tennessee Rules of Civil Procedure. In light of the compressed schedule established for this matter, TAWC respectfully submits that utilizing written discovery requests is the most reasonable discovery method. To quote the CAPD, "Pretrial discovery is used to uncover information that will assist in defining or clarifying the issues in the case or that will illuminate issues for a court in the administration or adjudication of the case." CAPD's Objections at 2-3. That is precisely what these discovery requests are designed to do. CMA's Objections to Discovery Requests 2, 4-8 should be overruled and the motion to compel granted.

A third category of TAWC's discovery is a request for copies of documents referred to or relied upon in responding to the discovery requests. Exhibit A, TAWC's Discovery Request 3.

This is a standard and basic discovery request designed to discover the source of information a party provides in response to other discovery requests. In response, the CMA states only general and boilerplate objections. CMA's Objections to Discovery Request 3 are without merit and the motion to compel should be granted.

The final category of TAWC's discovery is the request for all material CMA intends to use at the hearing. Exhibit A, TAWC's Discovery Request 9. The purpose, of course, is to eliminate surprise and clarify the issues – the twin goals of discovery identified by the CAPD. The CMA's objections (determined after being referred to the Objection to Discovery Request 6 and then to the Objection to Discovery Request 2) are burdensomeness, lack of an expert, and "overbroad, vague, and ambiguous." These objections are simply without merit. To the extent the CMA's response depends on its ability to answer Request 2 concerning experts, it should supplement its Response to Request 9 when it answers Request 2. The CMA's objections to Discovery Request 9 should be overruled.

For all the foregoing reasons, TAWC respectfully submits that the CMA's Objections to TAWC's Discovery Requests are without merit, should be overruled, and responses should be compelled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", is written over a horizontal line.

T. G. Pappas (#2703)

George H. Masterson (#6241)

R. Dale Grimes (#6223)

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Counsel for Petitioner

Tennessee American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Tennessee American Water Company's Motion to Compel Responses to Discovery Propounded on Chattanooga Manufacturers Association has been served, via the method(s) indicated, on this the 11th day of April, 2003, upon the following:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

PETITION OF TENNESSEE-
AMERICAN WATER COMPANY TO
CHANGE AND INCREASE CERTAIN
RATES AND CHARGES ...

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DOCKET NO. 03-00118

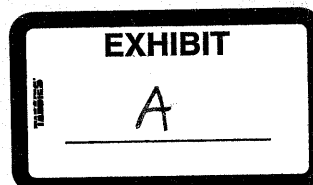
**CHATTANOOGA MANUFACTURERS ASSOCIATION'S OBJECTIONS
TO TAWC'S FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to *Rules 26, 33 and 34 of the Tennessee Rules of Civil Procedure* and *Tenn. Code Ann. § 4-5-301, et seq.*, Intervenor Chattanooga Manufacturers Association ("CMA") submits the following objections to the First Set of Interrogatories and Request for Production of Documents of Tennessee-American Water Company ("TAWC" or the "Company").

OBJECTIONS

1. CMA objects to the definitions and instructions contained in the interrogatories and request for production to the extent that the definitions and instructions attempt to impose on CMA a burden or obligation greater than that required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

2. CMA objects to the interrogatories and requests to the extent they call for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection. CMA objects to TAWC's interrogatories and requests to the extent that the Company is attempting to impose on CMA obligations with regard to identification of privileged documents beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.



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3. CMA objects to the production of any documents prepared by it subsequent to the filing of this litigation or contested case.

4. CMA objects to Company's interrogatories and requests to the extent that the Company is attempting to impose on CMA obligations to supplement its responses beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

5. CMA objects to Company's interrogatories and requests to the extent that Company is attempting to require CMA to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

6. CMA objects to Company's interrogatories and requests to the extent that they seek information and documents that are readily available through public sources or are in the Company's own possession, custody or control. It is unduly burdensome and oppressive to require CMA to respond or produce documents that are equally or more available to Company.

7. CMA objects to the interrogatories and requests to the extent that they seek information relating to matters not at issue in this litigation or reasonably calculated to lead to the discovery of admissible evidence. By providing information in response to these interrogatories and requests, CMA does not concede that such information is relevant, material or admissible in evidence. CMA reserves all rights to object to the use of such information as evidence.

8. CMA's objections and responses to these interrogatories and requests are based on information now known to it. CMA reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

OBJECTIONS TO DISCOVERY REQUESTS

Subject to and without waiving any of the objections, the following additional objections are provided:

Discovery Request No. 1: State in detail the legal and factual basis for any objection or opposition CMA has with respect to any aspect of the rate increase requested by TAWC in this docket.

Response. CMA objects to Discovery Request No. 1 as being overbroad and premature. The pre-hearing officer's schedule for direct testimony sets a deadline for any testimony that may be submitted by CMA as May 30, 2003, and any such testimony will be provided on or before that date.

Discovery Request No. 2: Identify each person whom you expect to call as an expert witness at any hearing in this docket, and for each such expert witness:

- a. Identify the field in which the witness is to be offered as an expert.
- b. Provide complete background information, including the expert's current employer as well as his or her educational, professional and employment history and qualifications within the field in which the witness is expected to testify, and identify all publications written or presentations presented in whole or in part by the witness.
- c. Provide the grounds (including without limitation any factual bases) for the opinions to which the witness is expected to testify, and provide a summary of the grounds for each such opinion.
- d. Identify any matter in which the expert has testified (through deposition or otherwise) by specifying the name, docket number and forum of each case, the dates of the prior testimony and the subject of the prior testimony, and identify the transcripts of any such testimony.

e. Identify for each such expert any person whom the expert consulted or otherwise communicated with in connection with his expected testimony.

f. Identify the terms of the retention or engagement of each expert including but not limited to the terms of any retention or engagement letters or agreements relating to his/her engagement, testimony and opinions as well as the compensation to be paid for the testimony and opinions.

g. Identify all documents or things shown to, delivered to, received from, relied upon or prepared by any expert witness, which are related to the witness(es)' expected testimony in this case, whether or not such documents are supportive of such testimony, including without limitation all documents or things provided to that expert for review in connection with testimony and opinions.

h. Identify any exhibits to be used as a summary of or support for the testimony or opinions provided by the expert.

Response. CMA objects to Discovery Request No. 2 as being overbroad, vague, ambiguous and unduly burdensome. At this time, experts have not been determined for purposes of testimony at trial, and CMA will identify experts, if any, within the time limits and requirements set forth by the scheduling order in this case.

Discovery Request No. 3: Please produce copies of any and all documents referred to or relied upon in responding to TAWC's discovery requests.

Response. See objection to Discovery Request No. 2.

Discovery Request No. 4: Please provide all materials provided to, reviewed by or produced by any expert or consultant retained by CMA to testify or to provide information from which another expert will testify concerning this case.

Response. See objection to Discovery Request No. 2.

Discovery Request No. 5: Please produce all workpapers of any of CMA's proposed experts, including but not limited to file notes, chart notes, tests, test results, interview and/or consult notes and all other file documentation that any of CMA's expert witnesses in any way used, created, generated or consulted by any of CMA's expert witnesses in connection with the evaluation, conclusions and opinions in the captioned matter.

Response. See objection to Discovery Request No. 2. Additionally, CMA objects to Discovery Request No. 5 as being vague and ambiguous and overbroad.

Discovery Request No. 6: Please produce a copy of all trade articles, journals, treatises and publications of any kind in any way utilized or relied upon by any of CMA's proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in the captioned matter.

Response. See objection to Discovery Request No. 2. Additionally, CMA objects to Discovery Request No. 6 as being unduly burdensome.

Discovery Request No. 7: Please produce a copy of all documents which relate or pertain to any factual information provided to, gathered by, utilized or relied upon by any of CMA's proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in the captioned matter.

Response. See objections to Discovery Request No. 6. Additionally, CMA objects to Discovery Request No. 7 as being overbroad, vague and ambiguous and requesting irrelevant or privileged

information. CMA objects to Discovery Request No. 7 to the extent that it seeks the identification of all documents which "relate or pertain" to any factual information utilized or relied upon by proposed experts, as it is impossible to respond to such a broad question.

Discovery Request No. 8: Please produce a copy of all articles, journals, books or speeches written by or co-written by any of CMA's expert witnesses, whether published or not.

Response. See objections to Discovery Request No. 6. Additionally, CMA objects to Discovery Request No. 8 as being overbroad, vague and ambiguous and requesting irrelevant or privileged information.

Discovery Request No. 9: Please produce any and all documentation, items, reports, data, communications and evidence of any kind that CMA intends to offer as evidence at the hearing or to refer to in any way at the hearing.

Response. See objections to Discovery Request No. 6.

Discovery Request No. 10: Please produce all documents that refer or relate to the subject matter of your response to Discovery Request No. 1.

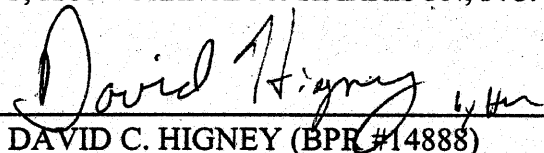
Response. See objections to Discovery Request No. 6. Additionally, CMA objects to Discovery Request No. 10 as being overbroad, vague and ambiguous and requesting irrelevant or privileged information. CMA objects to Discovery Request No. 10 to the extent that it seeks the identification of all documents that "refer or relate" to the subject matter of CMA's response to Discovery Request No. 1, as it is impossible to respond to such a broad question.

Discovery Request No. 11: Please identify by name, address, employer and current telephone number, all persons having knowledge of the subject matter of your response to Discovery Request No. 1.

Response. CMA objects to Discovery Request No. 11 as being overbroad, vague and ambiguous.

GRANT, KONVALINKA & HARRISON, P.C.

By: _____



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- and -



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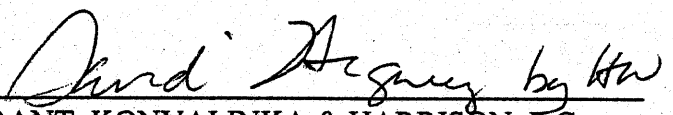
CERTIFICATE OF SERVICE

I hereby certify that I have on this 7th day of April, 2003, served the foregoing pleading either by fax, overnight delivery service or first class mail, postage prepaid, to all parties of record at their addresses shown below:

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